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Supreme Court of the United States

OCTOBER TERM 1947

No. 190-193

In Proceedings for the Reorganization of a Railroad

IN THE MATTER

of

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY,
Debtor.

GERALD AXELROD, et al., constituting the Convertible Bond-
holders Group, owners of $4\frac{1}{2}\%$ Gold Bonds of the
above-named Debtor dated May 1, 1930,

Petitioners,

v.

JOSEPH B. FLEMING and AARON COLNOR, as Trustees of
THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COM-
PANY, et al.,

Respondents.

REPLY MEMORANDUM BRIEF

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holders Group,
Petitioners.

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REPLY MEMORANDUM BRIEF

Petitioners, the Convertible Bondholders Group owners of bonds of the \$32,228,000 issue of the $4\frac{1}{2}\%$ Gold bonds of the above named debtor in this proceeding, desire to bring the following information to the attention of this honorable Court:

I. Since filing our petition for writ of certiorari in this Court dated July 4, 1947, the Interstate Commerce Commission has indicated that it will not express its views as to the desirability of reviewing the Rock Island plan unless requested to do so by the Court.

The following is the statement by the Commission:

“INTERSTATE COMMERCE COMMISSION
Bureau of Finance
WASHINGTON 25

HHW :meg
Finance Docket No. 10028
September 12, 1947

Mr. Harry Kirshbaum
67 W. 44th St.
New York, New York

Dear Sir:

This will acknowledge your letter of September 3, 1947 requesting the Commission to file a brief in the matter of the applications for a writ of certiorari now pending before the Circuit Court of Appeals in the matter of the reorganization of the Chicago, Rock Island & Pacific Railway Company, requesting the court to return the plan of reorganization to the Commission for a reconsideration and revision. You cite the Missouri Pacific proceeding as a precedent for this action. You perhaps know that the court specifically requested the Commission to advise the court of its views in the Missouri Pacific proceeding. This has never been done in the Rock Island proceeding, and without such a request, it is not the Commission's practice to take such action.

Very truly yours,

OLIVER E. SWEET
Director”

II. In the Missouri Pacific proceeding referred to in said statement the United States Circuit Court of Appeals, 8th Circuit, entered an order recently in which it stated that having heard counsel for the parties and

"being of the view that because of the substantial changed conditions which were not anticipated by the Commission but which have become apparent since the order approving said plan of reorganization was entered, that the order of the District Court approving said plan should be vacated and set aside and said plan should be returned to the District Court with directions to the District Court to return the plan to the Interstate Commerce Commission to take such further evidence and make such further recommendations as to it shall appear proper;

IT IS THEREFORE ORDERED that said order of the District Court, entered on January 22, 1946, approving said plan of reorganization (No. 2604-B) be and the same hereby is vacated and set aside and that said cause be and it hereby is remanded to the District Court with directions to return the plan to the Interstate Commerce Commission for its further investigation, consideration and recommendation.

IT IS FURTHER ORDERED that the costs of these appeals so far as not already paid shall be paid by the Trustee of the debtors.

Dated at St. Paul, Minnesota, this 9th day of September, A. D. 1947."

Certified copies of the above order have heretofore been filed with the Clerk of this Court by the Clerk of said Circuit Court of Appeals.

III. It is also noteworthy that to-day, October 7, 1947 as this Memorandum goes to press, the Interstate Com-

merce Commission granted authority to all railroads to increase by 10% all freight rates, adding an estimated increase of \$700,000,000 in annual revenue to the railroads of the country.

We deem the above statements by the Commission and the views of the United States Circuit Court of Appeals, 8th Circuit so important as to inform this honorable Court thereof.

Copies of this Brief are being sent to all attorneys of record.

Dated October 7, 1947.

Respectfully submitted,

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